

Remarks/Arguments

I. Amendments to the Claims

Claims 1-31 are currently pending in the above-referenced application, with claims 1, 10, and 24 being independent claims.

Claim 1 is amended herein to correct various typographical errors. More particularly, lines 3 and 5 of claim 1 are amended herein to delete the word "at" recited before the word "along." As such, the amendment of claim 1 is not considered a narrowing amendment for reasons related to patentability.

II. Indication of Allowable Subject Matter

Applicants thank the Examiner for his indication that claims 10-23 contain allowable subject matter.

III. Rejection of Claims under 35 U.S.C. § 102

In the Office action, claims 1-9 and 24-31 are rejected under 35 U.S.C. § 102(e) as being anticipated by Hammer et al. (U.S. Pat. No. 6,471,622). There are several differences between the inventions defined in independent claims 1 and 24, each of which distinguish the invention over the Hammer patent.

Under 35 U.S.C. § 102, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See MPEP § 2131. Claims 1 and 24 recite a treadmill comprising a support frame, a motor frame pivotally attached to the support frame along a first pivot line, and a base frame being pivotally attached to the motor frame along a second pivot line spaced from the first pivot line. Further, claim 1 also recites an elevation motor attached to the motor frame to cause the incline of the support bed to change. Hammer et al. does not teach or suggest a motor frame pivotally attached to a support frame and also pivotally attached to a base frame as recited in claims 1 and 24. Hammer et al. discloses no motor frame structure pivotally attached between other frame structures. The incline motor 80 of Hammer is attached to main frame 30. See Hammer patent, Fig. 4. The main frame is not pivotally attached between other frame members. As such,

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Hammer et al. does not teach or suggest a motor frame pivotally attached to a support frame and a base frame pivotally attached to the motor frame as recited in claims 1 and 24.

Thus, it is respectfully submitted that, for at least the reasons discussed above, the Hammer et al. reference does not disclose or suggest all of the limitations of claims 1 and 24. As such, claims 1 and 24 are patentable under 35 U.S.C. § 102(e) over Hammer et al. and are in form for allowance, and such indication is respectfully requested. Claims 2-9 and 25-31 depend from and include all the limitations of claims 1 and 24. Thus, for at least the same reasons discussed above with regard to claims 1 and 24, dependent claims 2-9 and 25-31 are patentable under 35 U.S.C. § 102(e) over Hammer et al. and are in form for allowance, and such indication is respectfully requested.

Conclusion

For at least the various reasons discussed herein, it is believed that claims 1-31 are in form for allowance, and such indication is respectfully requested. This Amendment and Response is filed in response to the first Office action of October 1, 2004. A petition for a three month extension of time under 37 C.F.R. § 1.136(a) is filed herewith, making this Amendment due on or before Friday, April 1, 2005. A check in the amount of \$1,200 is enclosed herewith to cover the \$1,020 extension of time fee and the \$180 fee required under 37 C.F.R. § 1.17(p) for the enclosed Information Disclosure Statement. It is believed no further fees are due with respect to the filing of this Amendment; however, if additional petitions or fees are required, please consider this a request therefor and authorization to charge Deposit Account No. 04-1415 accordingly.

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Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Charles R. Matson
Attorney Reg. No. 52,006
DORSEY & WHITNEY LLP
370 Seventeenth Street, Suite 4700
Denver, Colorado 80202-5647
Tel.: (303) 629-3400
Fax: (303) 629-3450

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